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JAMES R. BROWNING, Clerk

No. 411.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

GEORGE SAM MAGIN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING

On Denial of Certiorari to United States Court of Appeals for the Seventh Circuit.

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The petitioner herein, George Sam Magin, now respectfully prays that this Court grant a rehearing or reconsideration of its order of December 5, 1960, denying the petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

And he respectfully refers to the suggestions annexed hereto, and by reference made a part hereof, as grounds therefor.

RAY M. FOREMAN,
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200 West Third Street,
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Attorneys for Petitioner.

CERTIFICATE.

I hereby certify that the within petition for rehearing is presented in good faith and not for delay, and that the petition is restricted to the ground specified and filed for the reason that it is truly believed that the Court may have overlooked or misapprehended the point made.

Ray M. Foreman.

SUGGESTIONS.

Petitioner respectfully suggests that this Court, in denying his application for a writ of certiorari, has overlooked the fact that the decision of the Court of Appeals sought to be reviewed has in terms conceded a conflict between the conclusion reached by it and the Court of Appeals for the Second Circuit (Petition for Certiorari [Opinion of Court of Appeals], pp. 50, 51).

Petitioner realizes that Rule 19 (1) of this Court expressly asserts that a conflict between courts of appeals is not a "controlling" reason for the issuance of certiorari, but he respectfully points out that in the case at bar there is not only a conflict, but that the conflict arises because of the conclusion of the Seventh Circuit Court of Appeals that the Second Circuit Court of Appeals incorrectly construed a decision of this Court.

It would, therefore, seem that public interest would indicate that further exploration of the question by this Court would be appropriate.

And this conclusion, petitioner respectfully suggests, would appear to be emphasized when it is considered that the Seventh Circuit Court of Appeals, in reaching its decision, was required to read into the applicable statute (18 U. S. C., § 1621) an element of a crime not expressly therein set out (Petition for Certiorari, p. 18). As the opinion of the Seventh Circuit now stands, the prosecution must not only prove that the defendant charged with perjury did not believe that his utterances were false, but it must also prove that the utterances were not objectively true. The latter requirement cannot be found in the statute.

It might be assumed that a defendant cannot be prejudiced by reading into a criminal statute a requirement that

the prosecution prove an additional element, and this ordinarily would be true. The vice, however, in connection with a perjury prosecution is that it permits the transfer of all the strict rules of evidence from the act denounced by the express words of the law, and leaves the defendant subject to conviction simply on circumstantial evidence — as, indeed, the Court of Appeals below frankly held (Petition for Certiorari [Opinion of Court of Appeals], p. 51).

Petitioner here was probably guilty of a tactical error in burdening his petition with a multitude of points, thus unnecessarily obscuring, or minimizing, each of them. Regardless of this Court's view as to the majority of them, however, petitioner believes that it is in the interest of the orderly administration of the criminal law that the express conflict between the Court of Appeals for the Second Circuit in U. S. v. Remington, 191 F. 2d 246, and the Court of Appeals for the Seventh Circuit in the case at bar be settled by the consideration and judgment of this Court.

Respectfully submitted,

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Danville, Illinois.

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